



Billing Code: 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Parts 221, 307, 340, and 356

RIN 2133-AB89

Civil Penalties

AGENCY: Maritime Administration (MARAD), Department of Transportation (DOT).

ACTION: Interim final rule.

SUMMARY: This interim final rule updates the maximum civil penalty amounts for violations of statutes and regulations administered by MARAD pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015. This interim final rule amends our regulations to reflect the new, adjusted civil penalty amounts MARAD may assess pursuant for violations of procedures related to the American Fisheries Act, certain regulated transactions involving documented vessels, the Automated Mutual Assistance Vessel Rescue program (AMVER), and the Defense Production Act.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Office of Chief Counsel, MAR 225, Maritime Administration, 1200 New Jersey Avenue, SE, West Building, Second Floor, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: T. Mitchell Hudson, Jr., Office of Chief Counsel, MARAD, telephone (202) 366-9373, email to: rulemakings.marad@dot.gov, 1200 New Jersey Ave, SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvement Act (the 2015 Act), Pub. L. 114-74, Section 701, was signed into law. The purpose of the 2015 Act is to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act requires agencies to make an initial catch up adjustment to the civil monetary penalties they administer through an interim final rule and then to make subsequent annual adjustments for inflation. The amount of increase of any adjustment to a civil penalty pursuant to the 2015 Act is limited to 150 percent of the current penalty. Agencies are required to issue the interim final rule with the initial catch up adjustment by July 1, 2016.

The method of calculating inflationary adjustments in the 2015 Act differs substantially from the methods used in past inflationary adjustment rulemakings conducted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), Pub. L. 101-410. Previously, adjustments to civil penalties were conducted under rules that required significant rounding of figures. For example, a penalty increase that was greater than \$1,000, but less than or equal to \$10,000, would be rounded to the nearest multiple of \$1,000. While this allowed penalties to be kept at round numbers, it meant that penalties would often not be increased at all if the inflation factor was not large enough. Furthermore, increases to penalties were capped at 10 percent. Over time, this formula caused penalties to lose value relative to total inflation.

The 2015 Act has removed these rounding rules; now, penalties are simply rounded to the nearest \$1. While this creates penalty values that are no longer round numbers, it does ensure that penalties will be increased each year to a figure commensurate with the actual calculated

inflation. Furthermore, the 2015 Act “resets” the inflation calculations by excluding prior inflationary adjustments under the Inflation Adjustment Act, which contributed to a decline in the real value of penalty levels. To do this, the 2015 Act requires agencies to identify, for each penalty, the year and corresponding amount(s) for which the maximum penalty level or range of minimum and maximum penalties was established (i.e., originally enacted by Congress) or last adjusted by statute or regulation other than pursuant to the Inflation Adjustment Act.

The Director of the Office of Management and Budget (OMB) provided guidance to agencies in a February 24, 2016 memorandum on how to calculate the initial adjustment required by the 2015 Act.¹ The initial catch up adjustment is based on the change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October in the year the penalty amount was established or last adjusted by Congress and the October 2015 CPI-U. The February 24, 2016 memorandum contains a table with a multiplier for the change in CPI-U from the year the penalty was established or last adjusted to 2015. To arrive at the adjusted penalty, the agency must multiply the penalty amount when it was established or last adjusted by Congress, excluding adjustments under the Inflation Adjustment Act, by the multiplier for the increase in CPI-U from the year the penalty was established or adjusted provided in the February 24, 2016 memorandum. The 2015 Act limits the initial inflationary adjustment to 150 percent of the current penalty. To determine whether the increase in the adjusted penalty is less than 150 percent, the agency must multiply the current penalty by 250 percent. The adjusted penalty is the lesser of either the adjusted penalty based on the multiplier for CPI-U in Table A of the February 24, 2016 memorandum or an amount equal to 250 percent of the current penalty. This interim

¹ Memorandum from the Director of OMB to Heads of Executive Departments and Agencies, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Feb. 24, 2016), *available at* www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf.

final rule adjusts the civil penalties for violations of statutes and regulations that MARAD administers consistent with the February 24, 2016 memorandum.

II. Inflationary Adjustments to Penalty Amounts in 46 CFR Part 221

Changes to Civil Penalties for Regulated Transactions Involving Vessel

Ownership Transfers and other Maritime Interests (46 CFR 221.61)

The maximum civil penalties arising under 46 CFR 221.61 have not been updated since they were established, except for inflationary adjustments pursuant to the Inflation Adjustment Act of 1990. The maximum civil penalty for a single violation of any provision under 46 U.S.C. Chapter 313 and all of Subtitle III related MARAD regulations, except section 31329, specified in 31309 of Title 46 of the United States Code was set at \$10,000 when the penalty was established by Pub. L. 100-710, 102 Stat. 4747, enacted in 1988. Likewise, the maximum civil penalty for a single violation of 31329 of Title 46 of the United States Code as it relates to the court sales of documented vessels, specified in 31330 of Title 46 of the United States Code was set at \$25,000 when the penalty was established by the same statute, Pub. L. 100-710, 102 Stat. 4747, enacted in 1988. Lastly, for penalties arising under 46 CFR 221.61, the maximum civil penalty for a single violation of 56101 of Title 46 of the United States Code as it relates to approvals required to transfer a vessel to a noncitizen, specified in 56101(e) of Title 46 United States Code was set at not more than \$10,000 when the penalty was established by Pub. L. 101-225, 103 Stat. 1908, enacted in 1989. Applying the multiplier for the increase in CPI-U for 1988 in Table A of the February 24, 2016 memorandum (1.97869) results in an adjusted civil penalty of \$19,787 pursuant to 46 U.S.C. 31309; \$49,467 pursuant to 46 U.S.C. 31330. Applying the multiplier for the increase in CPI-U for 1989 (1.89361) results in an adjusted civil penalty of \$18,936 pursuant to section 56101(e).

Inflationary Adjustments to Penalty Amounts in 46 CFR Part 307

Changes to Civil Penalties for Failure to File an AMVER Report (46 CFR 307.19)

The maximum civil penalty for a single violation of 50113 of Title 46 of the United States Code related to use and performance reports by operators of vessels as specified in 50113(b) of Title 46 of the United States Code was set at \$50.00 per day when the penalty was established by Pub. L. 84-612, 70 Stat. 332, enacted in 1956. This civil penalty has not been updated since it was established. Applying the multiplier for the increase in CPI-U for 1956 in Table A of the February 24, 2016 memorandum (8.64865) would result in an adjusted civil penalty of \$432.433, which is more than the limitation on inflationary adjustments of 150 percent, accordingly the adjusted civil penalty is \$125.00, which is 150 percent of the previously penalty amount not counting updates made under the Inflation Adjustment Act.

Inflationary Adjustments to Penalty Amounts in 46 CFR Part 340

Changes to Civil Penalties for Violating Procedures for the Use and Allocation of Shipping Services, Port Facilities and Services for National Security and National Defense Operations (46 CFR 340.9)

The maximum civil penalty for a single violation of 4501 of Title 50 of the United States Code, specified in 4513 of Title 50 of the United States Code, at 46 CFR 340.9, was set at not more than \$10,000 when the penalty was established by the Defense Production Act, 64 Stat. 799, enacted in 1950. This civil penalty has not been updated since it was established. Applying the multiplier for the increase in CPI-U for 1950 in Table A of the February 24, 2016 memorandum (9.66821) would result in an adjusted civil penalty of \$96682.1, which is above the 150 percent limit for inflationary adjustments, so the adjusted civil penalty is \$25,000, which

is 150 percent of the previous penalty amount not counting updates under the Inflation Adjustment Act.

Inflationary Adjustments to Penalty Amounts in 46 CFR Part 356

Changes to Civil Penalties for Violations in Applying For or Renewing a Vessel's Fishery Endorsement (46 CFR 356.49)

The maximum civil penalty for a single violation of 12151 of Title 46 of the United States Code for engaging in fishing operations as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act, within the Exclusive Economic Zone, specified in 12151(c) of Title 46 of the United States Code, and at 46 CFR 356.49, was set at \$100,000.00 for each day such vessel engaged in fishing when the penalty was established by Pub. L. 105-277, 112 Stat. 2681-620, enacted in 1998. This civil penalty has not been updated since it was established. Applying the multiplier for the increase in CPI-U for 1998 in Table A of the February 24, 2016 memorandum (1.45023) results in an adjusted civil penalty of \$145,023.

III. Dispensing with Notice and Public Comment

MARAD is promulgating this interim final rule to ensure that the amount of civil penalties contained in 46 CFR sections 221.61, 307.19, 340.9 and 356.49 -- reflect the statutorily mandated ranges as adjusted for inflation. Pursuant to the 2015 Act, MARAD is required to promulgate a "catch-up adjustment" through an interim final rule. Pursuant to the 2015 Act and 5 U.S.C. 553(b)(3)(B), MARAD finds that good cause exists for immediate implementation of this interim final rule without prior notice and comment because it would be impracticable to delay publication of this rule for notice and comment and because public comment is unnecessary. By operation of the Act, MARAD must publish the catch-up adjustment by interim final rule by July 1, 2016. Additionally, the 2015 Act provides a clear formula for adjustment of

the civil penalties, leaving the agency little room for discretion. Furthermore, the increases in MARAD's civil penalty authority authorized by 46 U.S.C. sections 12151(c), 31309, 31330, 50113(b), 56101(e) and 50 U.S.C. 4513 are already in effect and the amendments merely update the relevant regulations to reflect the new statutory civil penalty. For these reasons, MARAD finds that notice and comment would be impracticable and is unnecessary in this situation.

IV. Rulemaking Analyses and Notices

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

MARAD has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866 or Executive Order 13563. This action is limited to the adoption of adjustments of civil penalties under statutes that the agency enforces, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures and the policies of the Office of Management and Budget. Because this rulemaking does not change the number of entities that are subject to civil penalties, the impacts are limited. Furthermore, excluding the penalties in 46 CFR sections 221.61, 307.19, 340.9 and 356.49 for violating certain long standing procedures, this final rule does not establish civil penalty amounts that MARAD is required to seek.

We also do not expect the increase in the civil penalty amount in any of these regulations to be economically significant. Over the last five years, MARAD has not collected any civil penalties under these regulations. Increasing the current civil penalty amount by 150 percent would not result in an annual effect on the economy of \$100 million or more.

Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. Since this regulation does not establish a penalty amount that MARAD is required to seek, except for the long standing civil penalties set forth in 46 CFR sections 221.61, 307.19, 340.9 and 356.49, this rule will not have a significant economic impact on small businesses. Additionally, over the last five years, MARAD has not collected any civil penalties under these regulations. Accordingly, increasingly the civil penalty amount is unlikely to have any economic impact on any small businesses.

In addition, MARAD has determined the RFA does not apply to this rulemaking. The 2015 Inflation Act requires MARAD to publish an interim final rule and does not require MARAD to complete notice and comment procedures under the APA. The Small Business Administration's A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act (2012), provides that:

If, under the APA or any rule of general applicability governing federal grants to state and local governments, the agency is required to publish a general notice of proposed rulemaking (NPRM), the RFA must be considered [citing 5 U.S.C. 604(a)]....If an NPRM is not required, the RFA does not apply.

Therefore, because the 2015 Inflation Act does not require an NPRM for this rulemaking, the RFA does not apply.

Executive Order 13132 (Federalism)

Executive Order 13132 requires MARAD to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the

States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule only updates existing penalties, pursuant to statute. MARAD has not collected any civil penalties under these regulations within the last five years and if it were to assess penalties, due to the amounts involved, it would not have a substantial direct effect on a State. Thus, the requirements of Section 6 of the Executive Order do not apply.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104-4, requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. Because this rule will not have a \$100 million effect, no Unfunded Mandates assessment will be prepared.

Executive Order 12778 (Civil Justice Reform)

This rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, we state that there are no requirements for information collection associated with this rulemaking action.

Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or you may visit <http://dms.dot.gov>.

List of Subjects

46 CFR Part 221

Regulated Transactions Involving Documented Vessels and Other Maritime Interests.

46 CFR Part 307

Establishment of Mandatory Position Reporting System for Vessels.

46 CFR Part 340

Priority Use and Allocation of Shipping Services, Containers and Chassis, and Port Facilities and Services for National Security and National Defense Related Operations.

46 CFR Part 356

Requirements for Vessels of 100 Feet or Greater in Registered Length to Obtain a Fishery Endorsement to the Vessel's Documentation.

In consideration of the foregoing, 46 CFR parts 221, 307, 340, and 356 are amended as set forth below.

**PART 221—REGULATED TRANSACTIONS INVOLVING DOCUMENTED
VESSELS AND OTHER MARITIME INTERESTS**

1. The authority citation for 46 CFR part 221 is revised to read as follows:

AUTHORITY: 46 U.S.C. chs. 301, 313, and 561; Pub. L. 114-74; 49 CFR 1.93.

2. Section 221.61 is revised to read as follows:

§ 221.61 Compliance.

(a) This subpart describes procedures for the administration of civil penalties that the Maritime Administration may assess under 46 U.S.C. sections 31309, 31330 and 56101, pursuant to 49 U.S.C. 336.

(b) Pursuant to 46 U.S.C. 31309, a general penalty of not more than \$19,787 may be assessed for each violation of chapter 313 or 46 U.S.C. subtitle III administered by the Maritime Administration, and the regulations in this part that are promulgated thereunder, except that a person violating 46 U.S.C. 31329 and the regulations promulgated thereunder is liable for a civil penalty of not more than \$49,467 for each violation. A person that charters, sells, transfers or mortgages a vessel, or an interest therein, in violation of 46 U.S.C. 56101(e) is liable for a civil penalty of not more than \$18,936 for each violation.

**PART 307 - ESTABLISHMENT OF MANDATORY POSITION REPORTING SYSTEM
FOR VESSELS**

3. The authority citation for 46 CFR part 307 is revised to read as follows:

AUTHORITY: Pub. L. 109-304; 46 U.S.C. 50113; Pub. L. 114-74; 49 CFR 1.93.

4. Section 307.19 is revised to read as follows:

§ 307.19 Penalties.

The owner or operator of a vessel in the waterborne foreign commerce of the United States is subject to a penalty of \$125.00 for each day of failure to file an AMVER report required by this part. Such penalty shall constitute a lien upon the vessel, and such vessel may be libeled in the district court of the United States in which the vessel may be found.

**PART 340 - PRIORITY USE AND ALLOCATION OF SHIPPING SERVICES,
CONTAINERS AND CHASSIS, AND PORT FACILITIES AND SERVICES FOR
NATIONAL SECURITY AND NATIONAL DEFENSE RELATED OPERATIONS**

5. The authority citation for 46 CFR part 340 is revised to read as follows:

AUTHORITY: 50 U.S.C. 4501 et seq. (“The Defense Production Act”); Executive Order 13603 (77 FR 16651); Executive Order 12656 (53 FR 47491); Pub. L. 114-74; 49 CFR 1.45; 49 CFR 1.93(l).

6. Section 340.9 is revised to read as follows:

§ 340.9 Compliance.

Pursuant 50 U.S.C. 4513 any person who willfully performs any act prohibited, or willfully fails to perform any act required, by the provisions of this regulation shall, upon conviction, be fined not more than \$25,000 or imprisoned for not more than one year, or both.

**PART 356 - REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN
REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE
VESSEL'S DOCUMENTATION**

6. The authority citation for 46 CFR part 356 is revised to read as follows:

AUTHORITY: 46 U.S.C. 12102; 46 U.S.C. 12151; 46 U.S.C. 31322; Pub. L. 105-277, division C, title II, subtitle I, section 203 (46 U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; Pub. L. 107-20, section 2202, 115 Stat. 168-170; Pub. L. 114-74; 49 CFR 1.93.

7. In § 356.49, revise paragraph (b) to read as follows:

§ Penalties.

(b) A fine of up to \$145,023 may be assessed against the vessel owner for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) within the exclusive economic zone of the United States; and

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Dated: June 27, 2016.

By Order of the Maritime Administrator.

**Gabriel Chavez,
Secretary, Maritime Administration**

[FR Doc. 2016-15566 Filed: 6/29/2016 8:45 am; Publication Date: 6/30/2016]